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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 12, 2001

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE010313

Ex Parte: In the matter of amending
filing requirements for applications
to construct and operate electric
generating facilities

ORDER ESTABLISHING PROCEEDING AND PRESCRIBING NOTICE

By Final Order dated December 17, 1990, in Case
No. PUE900044, the Commission adopted filing requirements for
applications submitted by independent power producers ("IPP")
for construction of electric generating facilities pursuant to
§§ 56-234.3 and 56-265.2 of the Code of Virginia.¹

Since the adoption of the IPP filing requirements,
significant changes have occurred in the electric utility
industry in Virginia. Moreover, the statutes that govern the
Commission's granting of certificates of public convenience and
necessity for the construction of electric generating facilities
have also been amended significantly.² Therefore, we are

¹ Now codified at 20 VAC 5-302-10 et seq.

² For example, effective March 13, 1998, § 56-265.2 of the Code of Virginia was amended to permit the construction of "merchant plants." In addition, Chapter 23 of Title 56, the Virginia Electric Utility Restructuring Act ("the Act"), was enacted in 1999. It significantly changed the regulation of the

initiating this proceeding to establish new filing requirements for all entities seeking authority to construct and operate electric generating facilities in Virginia.

Our Staff has advised us that it has distributed informally to stakeholders proposed revisions to the filing requirements; has received written comments on the proposed revised rules from some stakeholders; has convened a stakeholder meeting to discuss the proposed rule changes; and has heard numerous comments and opinions expressed concerning how the Act affects the continuing applicability of §§ 56-234.3 and 56-265.2 of the Code of Virginia. Some stakeholders expressed the opinion that pursuant to the Act, those sections will have no applicability after January 1, 2002, with regard to the certification of electric generating facilities. After January 1, 2002, the generation of electric energy shall no longer be subject to regulation under Title 56, except as specified in the Act.³ Some stakeholders apparently believe that § 56-580 D will become the exclusive framework for permitting the construction and operation of electric generating facilities. However, our Staff has advised the Commission that it, as well as other stakeholders, believe that §§ 56-234.3 and 56-265.2 do not necessarily cease to have

generation of electricity in Virginia, and includes § 56-580 D pertaining to the construction and operation of generating facilities.

³ See § 56-577 A 3.

continuing applicability beyond January 1, 2002, when generation is "deregulated" pursuant to § 56-577 A 3.

In order to incorporate written comments as well as the comments received in the stakeholder meeting, our Staff has further revised its proposed filing requirements. A copy of these proposed filing requirements is attached to this Order as Appendix B. We emphasize that these new rules are our Staff's proposal and do not at this point reflect any finding by the Commission.

We are requesting formal comments on our Staff's proposed amendments to the filing requirements. In addition, we believe that the issue as to the continuing applicability of §§ 56-234.3 and 56-265.2 of the Code of Virginia is a threshold issue that should be decided. Therefore, we are requesting the filing of briefs on this issue by July 13, 2001. Accordingly,

IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE010313.
- (2) On or before July 13, 2001, interested parties may file with the Clerk of the Commission legal briefs regarding whether §§ 56-234.3 and 56-265.2 of the Code of Virginia continue to be applicable after January 1, 2002, in proceedings in which the Commission is requested to permit the construction and operation of electric generating facilities.

(3) On or before June 15, 2001, the Commission's Division of Information Resources shall make a downloadable version of Staff's proposed rules and this Order available at the Commission's Web site, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(4) On or before August 13, 2001, any person desiring to participate in this proceeding shall file with the Clerk of the Commission an original and fifteen copies (15) of comments or requests for hearing, as well as justification for such request, on the Staff's proposed rules and any other comments pertinent to these proceedings.

(5) On or before June 29, 2001, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia.

NOTICE TO THE PUBLIC OF A PROCEEDING TO
ADOPT REVISED FILING REQUIREMENTS FOR
APPLICATIONS SEEKING AUTHORITY TO CONSTRUCT
ELECTRICAL GENERATING FACILITIES IN VIRGINIA
CASE NO. PUE010313

By Final Order dated December 17, 1990, in Case No. PUE900044, the Commission adopted filing requirements for applications submitted by independent power producers ("IPP") for construction of electric generating facilities pursuant to §§ 56-234.3 and 56-265.2 of the Code of Virginia. (See 20 Va. Admin. Code 5-302-10 et seq.)

Since the adoption of the IPP filing requirements, significant changes have occurred in the electric utility industry in Virginia. Moreover, the statutes that

govern the Commission's granting of certificates of public convenience and necessity for the construction of electric generating facilities have also been amended. For example, effective March 13, 1998, § 56-265.2 of the Code of Virginia was amended to permit the construction of "merchant plants." In addition, Chapter 23 of Title 56, the Virginia Electric Utility Restructuring Act ("the Act"), was enacted in 1999. It significantly changed the regulation of the generation of electricity in Virginia and includes § 56-580 D pertaining to the construction and operation of generating facilities.

By Order entered June 12, 2001, the Commission established a proceeding to adopt new filing requirements for all entities seeking authority to construct and operate an electric generating facility in Virginia. After receiving input from certain stakeholders, the Commission's Staff has developed proposed revisions to the existing filing requirements. In addition, the Staff has advised that an issue has arisen concerning the continuing applicability of §§ 56-234.3 and 56-265.2 of the Code of Virginia, and whether these statutes will be superceded by § 56-580 D after January 1, 2002, with regard to the certification of electric generating facilities. On and after that date, the generation of electric energy will no longer be subject to regulation under Title 56, except as specified in the Act.

Interested parties may obtain a copy of Staff's proposed rules and the Commission's June 12, 2001, Order from the Commission's Web site:
<http://www.state.va.us/scc/caseinfo/orders.htm>. The Clerk's office will also provide a copy of the Order and proposed rules to any interested party, free of charge, in response to any written request for one.

Any person desiring to participate in this proceeding shall file comments on the proposed rules, or any other issue pertinent to these proceedings, or may request a hearing, by directing an original and fifteen (15) copies of such comments or request on or before August 13, 2001, to the Clerk of the State Corporation Commission at the address set forth below.

In addition, the Commission has invited interested parties to file legal briefs on the issue of the continuing the applicability of §§ 56-234.3 and 56-265.2 of the Code of Virginia beyond January 1, 2002. Any such briefs on this issue should be filed with the Clerk of the Commission, at the address set forth below, by July 13, 2001.

All written communications to the Commission should be directed to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and should refer to Case No. PUE010313.

VIRGINIA STATE CORPORATION COMMISSION

(6) All written communications to the Commission concerning this case should be directed to Joel H. Peck, Clerk, State Corporation Commission, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and must refer to Case No. PUE010313.

(7) This matter is continued for further orders of the Commission.

CHAPTER 302.

INFORMATION REQUIREMENTS IN SUPPORT OF APPLICATIONS FOR AUTHORITY
TO CONSTRUCT AND OPERATE AN ELECTRIC GENERATING FACILITY.

20 VAC 5-302-10. Applicability and scope.

Any application, except as noted herein, filed by a person planning to construct electric generating facilities and incidental or associated facilities in the Commonwealth of Virginia and who must apply for approval from the State Corporation Commission (“commission”), pursuant to §§56-46.1, 56-234.3, 56-265.2 and 56-580 D of the Code of Virginia must comply with the provisions of this chapter. Distributed generation facilities as defined by the commission and net energy metering facilities as defined in §56-594 are not subject to this chapter. Applications filed pursuant to this chapter must set forth the nature of the proposed facility, the applicant’s technical and financial fitness to construct, operate and maintain the proposed facility, the effects of the facility on the environment and economic development, the effects of the facility upon reliability of electric service provided by any regulated public utility, and why construction and operation of the proposed facility is not otherwise contrary to the public interest.

Some of the information described in the following sections and necessary to support an application for approval may be considered to be confidential or proprietary by the applicant. The Commission recognizes the need for confidential treatment of some, although certainly not all, data required herein. Therefore, the need for confidential treatment of data should first be carefully scrutinized before submitting an application and supporting information. Requests for confidential treatment of data will be handled under procedures set forth in the Commission’s Rules of Practice and Procedure (5 VAC 5-20-10 et seq.).

20 VAC 5-302-20. General information, **electric** generating facility information and documents to be included in the **application**.

The **following** information should be provided **for all proposed electric generating facilities**.

1. **Legal name of the applicant as well as any trade name.**
2. **A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof; e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.**
3. **Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.**
4. **Prefiled testimony in support of the application.**
5. **A discussion of the applicant's qualifications, including:**
 - a. **A summary of other projects developed and managed by the applicant.**
Include location, status, and operational history.
 - b. **A detailed description of the organizational structure of the applicant.**
Include the division of ownership, if applicable.

- c. A description of any affiliation or affiliations with an incumbent electric utility as defined in §56-576 of the Code of Virginia.
- 6. Specific information about the site for the proposed facility, including:
 - a. A written description of the location and city or county in which the facility will be constructed. Such description should be suitable for newspaper publication and be sufficient for identification of affected areas.
 - b. A description of the site, and a depiction on topographic maps of the proposed site.
 - c. The status of site acquisition (i.e., purchase option, ownership, etc.).
 - d. A description of any applicable local zoning or land use approvals required and the status of such approvals.
- 7. A summary of the proposed project, including relevant design features, estimated costs, and preliminary schedules for construction, testing and commercialization of the proposed facility.
- 8. Specific information about the proposed facility, including:
 - a. Description of all major systems, facility configuration and expected suppliers of major components.
 - b. Nameplate capacity, gross dependable capacity and net dependable capacity for generating unit.

9. Preliminary construction plans including (Note: information in this subdivision will not be required if §56-234.3 is deemed to be inapplicable.):
 - a. The names and addresses of the architects, engineers, contractors, subcontractors, when known, proposed to do such work.
 - b. The plan by which the applicant will monitor construction of the proposed facility.
 - c. The methods by which the work will be contracted, by competitive bid or otherwise.
 - d. A description of non-performance guarantees between the applicant and all major vendors and contractors.
10. A description of the fuel procurement strategy including fuel type, quality, source or sources, and transportation arrangements for fuel delivery. Describe fuel storage arrangements, if any. Description should also include identification of any new natural gas facilities, if any, needed to serve the proposed facility, ownership of any such natural gas facilities and plans for constructing such facilities.
11. Financial information for the applicant, or principal participant or participants in the project . If the applicant or principal participant or participants is a private entity, financial information should include an analysis of the entity's financial condition and financial statements for the two most recent fiscal

years. If the applicant or principal participant or participants is a public company, financial information should include the entity's most recent stockholder report or other financial statement.

12. A discussion of economic impacts, including tax and employment implications of the project.

13. A list of other local, state or federal government agencies whose requirements must be met in connection with the construction or operation of the project and a statement of the status of the approval procedures for each of these agencies.

14. A discussion of the environmental impact of the proposed facility with respect to the following, if applicable:

- a. Air quality (discussion should identify needed air permits, expected restrictions, expected emissions, rates of emissions, and any needed emissions offsets or allowances).
- b. Water quality and wetlands protection (discussion should include identification of any streams, rivers, lakes, ponds, tidal and non-tidal wetlands located near the proposed site).
- c. Natural heritage, threatened and endangered species.
- d. Source and discharge of cooling water (discussion should address potential impacts on regional water flows).

e. Solid and hazardous wastes (discussion should address impact on local water resources).

f. Erosion and sediment control.

g. Archaeological, historic, or architectural resources in the area.

h. Chesapeake Bay Preservation Areas designated by the locality.

i. Wildlife resources.

j. Recreation, agricultural and forest resources (discussion should identify federal, local, state or private parks and recreation areas).

k. The use of pesticides and herbicides.

l. Geology and mineral resources, caves, and sinkholes.

m. Transportation infrastructure.

15. A general discussion of reliability impacts including:

a. A description of transmission interconnection requirements and a preliminary discussion of the potential impact of the proposed facility on the interconnected transmission system.

b. A description of anticipated services (ancillary services, re-dispatch, energy imbalance, etc.) that may be provided to any transmission service provider.

c. A discussion of existing and expected generation reserves in the region and the impact of the proposed facility on such reserves.

16. A discussion of any impact that the proposed facility will have upon the rates paid by customers of any regulated public utility in the Commonwealth.
17. A discussion of whether the proposed facility is in the public interest.

VAC 5-302-25. Information required from incumbent electric utilities and affiliates of incumbent electric utilities.

The information in this section should be provided by any incumbent electric utility as defined in §56-576 of the Code of Virginia and any affiliate of an incumbent electric utility proposing to construct electric generating facilities in the Commonwealth of Virginia.

1. Total capacity controlled by the incumbent electric utility and its affiliates located within the incumbent utility's control area and reasonably accessible to the control area through transmission interconnections, with and without the proposed facility.
2. Total capacity located within the incumbent utility's control area and reasonably accessible to the control area through transmission interconnections, prior to construction of the proposed facility.
3. Five year projections of total expected capacity additions by size, technology and fuel type within the incumbent electric utility's control area and expected increases in transmission interconnection capacities into the control area.

4. Five year projections of capacity additions by size, technology and fuel type within the incumbent electric utility's control area to be made by the incumbent electric utility and its affiliates.
5. A description of the impact of the proposed facility on transmission interconnection capabilities and transmission congestion.
6. A discussion of the impact of the proposed facility on the development of a competitive generation market in Virginia.

20 VAC 5-302-30. Demonstration of the need, viability, and cost effectiveness of proposed facilities subject to the necessity determinations of §56-265.2 A of the Code of Virginia.

The information required by this section should be provided for any facility that will be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10 (§56-232 et seq.) of Title 56 of the Code of Virginia.

1. A thorough discussion of the need for the facility as it relates to the incumbent electric utility's obligations to provide capped rate service and default service.
2. Cost/benefit analyses or studies of the proposed facility and all supply alternatives considered to meet the incumbent utility's on-going service obligations.
3. Cost/benefit analyses or studies of all demand side alternatives considered to modify projected load in order to postpone or avoid the proposed facility. This

should include, but not be limited to, discussions of existing and potential demand modification programs for each customer sector.

20 VAC 5-302-40. Waivers

Requests for waivers of any of the provisions of this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission deems appropriate in the public interest.